In this case it appears that Dr. Miller had attended the medical lectures of Prof. Agnew and others, and after graduation had published a book which was an epitome of the said lectures, together with those of other professors, the matter taken from each professor being placed in a separate "*part*" of the book. The names of the professors were placed upon the title-page. Dr. Agnew, whose work appeared as Part 2, applied for an injunction, which was granted by the Common Pleas No. 2, of Philadelphia, whose action was sustained by the Supreme Court so far as it enjoined (1) the sale, circulation, and publication of any book announcing literally or substantially that it was "An Epitome on Surgery by D. Hayes Agnew, M. D., LL. D.; (2) and after sale, circulation or publication of Part 2 of the book (Dr. Agnew's portion) described in the bill, but was reversed so far as it enjoined the sale or circulation of "any other book containing the substance of lectures delivered by complainant at the University of Pennsylvania." It is very much to be regretted that the court gave no opinion, for the remark, "We see no sufficient reason for now disturbing the special injunction granted, except as to the latter part of the second prayer," can hardly be considered an opinion, and we are unfortunately left in the dark as to the grounds upon which the court proceeded in a very interesting case, and which, so far as we know, is the only one involving the precise question which has arisen in this country. It is thought, however, that the review of the case above cited and a consideration of the reason of the matter will satisfy the mind that the decision of the case in *Caird* v. *Sime* is correct, and that by a delivery of a college lecture the lecturer does not lose his property in his work, at least as regards the world at large—whether he could restrain publication if it were undertaken by the university of which he is an officer, is a matter which might be worthy of consideration and which would depend for its decision upon the terms upon which he held his chair or lecturership.

HENRY BUDD.

RECENT AMERICAN DECISIONS.

Supreme Court of New Jersey.

STATE v. DONOHUE.

If an animal having no natural propensity to be vicious commits an injury to the person of another, the owner is not liable unless he had previous knowledge of the vicious disposition.

The fact that the owner of a dog permitted him to be at large on the highway when he inflicted the injury sued for, will not make the owner liable without proof of the *scienter*.

CERTIORARI to review a judgment for defendant in an action for damages for plaintiff's having been bitten by a dog belonging to defendant. *Affirmed.*

Argued before VAN SYCKEL, MAGIE and PARKER, JJ.

The facts are stated in the opinion.

Messrs. *J. W. & J. K. Field*, for plaintiff.

Mr. *C. F. Lighthipe*, for defendant.

The opinion of the court was delivered by

VAN SYCKEL, J.—In July, 1885, the plaintiff, while walking in the public street in front of the defendant's premises, was bitten by the defendant's dog, which was lying unmuzzled on the sidewalk. The night being dark, the plaintiff did not see the dog until he sprung upon and bit her.

It also appears that a city ordinance prohibited the running at large of dogs in the street at any time without a muzzle.

The plaintiff insists that the dog, lying upon the sidewalk in violation of the city ordinance, must be regarded as a nuisance, and that, therefore, the owner is liable for any injury done by him.

Under the authority of *Durant* v. *Palmer*, 5 Dutch. 544, it may be that if the plaintiff, while on her way in the public street, had unavoidably fallen over the dog, and injured herself, the owner of the dog would be liable in damages for such injury. But whether he is liable for damages inflicted by the biting of the dog must depend, I think, upon the existence of the necessity of proving the *scienter*. The fact that the defendant acted in breach of the city ordinance subjects him only to the penalty prescribed therefor; it is not a circumstance upon which recovery in this suit can be supported.

The only question in the case is whether this suit will lie, without proof that the defendant had knowledge of the vicious propensity of the dog.

The rule has generally prevailed in the English courts that if an animal having no natural propensity to be vicious commits an injury the owner is not liable unless he has knowledge of his disposition.

In *Mason* v. *Keeling*, 12 Mod. 332, Lord HOLT said that the law takes notice, that a dog is not of fierce nature, but rather the contrary; and he therefore sustained the demurrer to the plaintiff's declaration because it did not allege the *scienter*.

In *Beck* v. *Dyson*, 4 Camp. 199, Lord ELLENBOROUGH directed a nonsuit, because the evidence was not sufficient to warrant the jury in inferring that the defendant knew that the dog was accustomed to bite.

In a like case Lord ABINGER nonsuited, because it did not ap-

pear that the owner had knowledge of the vicious propensity of his dog: *Hogan* v. *Sharpe,* 7 Carr. & P. 755.

In *Buxentine* v. *Sharp,* 3 Salk. 12, the reporter says: "The plaintiff declared that the defendant kept a bull which used to run at men, but did not say *sciens* or *scienter;* and this was adjudged ill after a verdict, because the action will not lie unless the owner knew the quality of his bull; and it cannot be intended that this was proved at the trial, because the plaintiff is not bound to prove more than is laid in his declaration."

Cox v. *Burbridge,* 13 Com. Bench, N. S. 430, was a case where the defendant's horse, being on a highway, kicked the plaintiff, a child playing there. There was no evidence to show how the horse came on the highway or that he was accustomed to kick. The plaintiff obtained a verdict; whereupon, the defendant was granted a rule *nisi* to enter a nonsuit.

Chief Justice ERLE, with whom all the judges agreed, said: "Even if there was negligence on the part of the owner of the horse, I do not see how that is at all connected with the damage of which the plaintiff complains. It appears that the horse was on the highway, and that without anything to account for it, he struck out and injured the plaintiff. I take the well-known distinction to apply here: that the owner of an animal is answerable for any damage done by it, provided it be of such a nature as is likely to arise from such an animal, and the owner knows it. Thus in the case of a dog, if he bites a man or worries sheep, and his owner knows he is accustomed to bite men or to worry sheep, the owner is responsible; but the party injured has no remedy unless the *scienter* can be proved. This is very familiar doctrine. The owner of a horse must be taken to know that a horse will stray if not properly secured, and may find its way into its neighbor's corn or pasture. For a trespass of that kind the owner is of course responsible. But if a horse does something which his owner has no reason to expect him to do, he has the same sort of protection that the owner of a dog has."

In *Jackson* v. *Smithson,* 15 Mees. & W. 563, where a ram butted the plaintiff's wife in the street, the Court of Exchequer refused to hold the owner of the animal liable, in the absence of evidence that he was aware of its propensity to attack passers by.

In *Hudson* v. *Roberts,* 6 Exch. 697, POLLOCK, C. B., said that

there must be some evidence of *scienter* to sustain an action for injury done by a bull while being driven along the highway.

The case of *Angus* v. *Radin*, 2 South. 816, holds the owner of cattle to a stricter accountability for damages done by them than the English cases establish. In that case the defendant's oxen broke the plaintiff's close and killed his cow; and the owner of the oxen was held liable, without proving the *scienter*, on the ground that he was responsible for the entire injury committed by his cattle while trespassing upon the plaintiff's premises.

Coxe v. *Robbins*, 4 Halst. Law, 477, requires every man, at his peril, to keep his cattle on his own close and makes him answerable for any injury they may do by straying without his knowledge upon the lands of another.

But I have found no case where the owner of a dog has been held in an action of trespass where his dog went upon the premises of another without his consent.

Beckwith v. *Shordike*, 4 Burr. 2092, was placed upon the express ground that the defendant was himself a trespasser with his dog in the plaintiff's close at the time the damage was done; so that the jury had a right to find that the act of the dog was the voluntary trespass of the master.

Cooley on Torts, p. 34, draws a distinction between dogs and beasts which subsist on grass and grain. If the latter break into inclosures, they may do serious mischief; and therefore if not restrained by the owner, he must respond for the damages that ensue.

No action has been maintained in this state against the owner of a dog, for killing sheep upon the land of another, unless the *scienter* was shown.

Mr. Chitty in his first volume on Pleading, p. 182, says that the owner of a dog is not liable unless he has notice of his vicious propensity; but if the animal were naturally of the propensity to do the mischief complained of, as horses and cattle to trespass on land, the owner is liable without alleging the *scienter*. The forms of pleading in the books of precedents are all in accordance with this text.

The practice of permitting dogs to run at large in our streets and highways has so long and so universally prevailed without holding the owner liable for any injury, which he had no reason to believe they would commit, that it would justly create great

surprise to maintain such a cause of action now. In my opinion the action will not lie, without proof of the *scienter*.

The judgment below should be affirmed.

On account of engagements in the Circuit Mr. Justice PARKER took no part in the decision of this case.

In general to make the owner or keeper of domestic animals liable in damages for personal injuries committed by them, it must be shown that he knew of their vicious propensities. This general proposition is so well established and known, that a citation of authorities to support it is unnecessary. But in view of the legal complications which frequently arise in actions of this nature, and the seeming discord springing from the practical application of this principle, it will be interesting to present a review of the authorities, and the reasons upon which the rule is founded.

The rule excepting owners and keepers of domestic animals from liability for injuries committed by such animals rests upon reasonable ground. Being of a tame nature, not given to do harm, it is unreasonable to suppose that under ordinary circumstances they would commit vicious acts; whereas, in the case of wild animals, whose nature to do mischief is well known, the law presumes this knowledge on the part of the owner or keeper. In both cases this knowledge is the same in substance and works the same results. In the former it must be established by evidence, while in the latter it is presumed: *Laverone* v. *Mangianti*, 41 Cal. 138; s. c., 10 Am. Rep. 269; *Spring Co.* v. *Edgar*, 99 U. S. 654, and cases.

The liability does not depend upon the classification of the animal doing the injury, but upon its propensity to do mischief. *Per* SHELDON, J., in *Earl* v. *Alstine*, 8 Barb. (N. Y.) 635. Thus, if a person chooses to keep a domestic animal, as a dog, which is naturally savage and dangerous, he does so at his peril, and would be liable for any injury done by such dog without evidence that he has ever done mischief before. Id.; see *Judge* v. *Cox*, 1 Stark 227; *Hartley* v. *Harriman*, 1 Barn. & Ald. 620. "The action rests upon the negligence of the owner in keeping an animal which is likely to prove injurious and hurtful. The *scienter* is the gist of the action:" *Koney* v. *Ward*, 36 How. Pr. (N. Y.) 256; *Hewes* v. *McNamara*, 106 Mass. 281; *Besozzi* v. *Harris*, 1 Fost. & Fin. 92. Where the owner of a horse suffered it to go at large in the streets of a populous city, he is liable to a person kicked by it, without proof that the owner knew that the horse was vicious, for the reason that the owner is presumed to know the natural disposition of a horse to gambol, plunge, and kick up his heels, and the consequent danger to persons on the streets: *Goodman* v. *Gay*, 15 Pa. St. 193; see *Dolph* v. *Ferris*, 7 W. & S. 369; *Paff* v. *Slack*, 7 Barr 254. But it is not negligence to let a horse run on a highway without notice of its vicious propensities, the rule being the same as applied to dogs: *Holden* v. *Shattuck*, 34 Vt. 336; *Cox* v. *Burbridge*, 13 C. B. (N. S.) 430; s. c., 11 W. R. 435. It is, however, negligence to let a stallion in a public highway: *McIlvaine* v. *Lantz*, 100 Pa. St. 586; s.

c., 45 Am. Rep. 400. Yet, where a horse is rightfully kept and strays upon the highway, the owner is not liable unless negligence is shown: *Fallon* v. *O'Brien*, 12 R. I. 518, approving *Goodman* v. *Gay*, 15 Pa. St. 188, and *Dickson* v. *McCoy*, 39 N. Y. 400.

A distinction between horses and dogs was attempted to be established in *Mason* v. *Keeling*, 1 Ld. Raym. 606, where the action failed because it was not shown that defendant knew that his dog was *valde ferox*. "For there is a great difference," says the court, "between horses and oxen, in which a man has a valuable property, and which are not so familiar to mankind, and dogs; the former, the owner ought to confine and take all reasonable caution that they do no mischief, otherwise an action will lie against him; but otherwise of dogs, before he has notice of some mischievous qualities." Concerning this, WILLIAMS, J., in *Cox* v. *Burbridge*, 13 C. B. (N. S.) 439, said, "I cannot see what difference it can make whether the animal is or is not one in which a man may have a valuable property."

As to Nature of Knowledge of Viciousness.—It has been held that notice which will charge the owner or keeper with liability must be notice that the animal was inclined to do the *particular mischief* of which complaint is made. Thus, notice that a dog is ferociously disposed toward cattle is not notice that he will attack persons. And it is not necessary that the owner should see his dog attack mankind, but the vicious propensity must have in some way have been brought to his knowledge, "so as to admonish him to take the necessary precaution to prevent injury in the future:" *Twigg* v. *Ryland*, 62 Md. 380. So it is said that knowledge of the owner that his dog has attacked animals of one class is not evidence from which knowledge may be inferred that it would attack animals of another and different class, nor that it would attack mankind: Wood on Nuisances, § 803; *Keightlinger* v. *Egan*, 65 Ill. 235, 247. "But it is not necessary that the aggression brought to the notice of the owner should be precisely similar to that on which the action against him is founded, but they should indicate a disposition to commit injury substantially like those which form the basis of the cause of action:" Shearman & Redf. on Neg., approved in *Mann* v. *Weiand*, 81 Star Pa. St. 243. See *Buckley* v. *Leonard*, 4 Denio (N. Y.) 500, 501. If there is within the owner's knowledge reasonable grounds to suppose that the dog may commit injury, he must restrain him or be liable for the consequences: *Flansburg* v. *Basin*, 3 Bradw. (Ill. App.) 531, and cases on p. 539. As to the reasons of this rule, the Supreme Court of New Hampshire, in a very recent case, says, that if it were necessary that the prior "vicious acts should be precisely similar" to that upon which the action is founded "there would be no actionable redress for the first injury of a particular kind committed by such an animal, because its owner would necessarily be exempt from all liability until it should commit another injury of exactly the same kind. It is enough to say that the law sanctions no such absurdity:" *Reynolds* v. *Hussey* (N. H.), 5 Atl. Rep. 458; s. c., 22 Rep. 563; s. c., 2 New England Rep. 722. Hence, it has been held that it is unnecessary that the owner have notice of a previous injury to others. "It is the *propensity to commit the mischief* that constitutes the danger, and therefore it is sufficient if the owner has seen or heard enough to convince a man

of ordinary prudence of the animal's inclination to commit the *class of injuries* complained of. * * * The question in each case is whether the notice was sufficient to put the owner on his guard, and to require him, as an ordinarily prudent man, to anticipate the injury which has actually occurred. Hence, it is unnecessary to prove more than that he has good cause of supposing that the animal may so conduct itself:" *Reynolds* v. *Hussey*, *supra*. Thus, where the owner knows his dog to be ferocious, he is liable for injury to one on his premises innocently, without notice of the dog's character. The fact that this is the dog's first attack on persons does not excuse the owner: *Rider* v. *White*, 65 N. Y. 54; s. c., 22 Am. Rep. 600. "The law has gone far to shield those who have kept dogs for the protection of their property from the consequences of injuries to persons inflicted by them, but not so far as to protect the keepers of such as are known to them to be ferocious to a degree that endangers the safety of such as are unwarned and innocently upon the premises from the consequences of wounds inflicted by them:" Id. So, where the owner knows that his dog follows his team and watches it when hitched, and is accustomed to attack and bite strangers approaching the team, he is liable to one bitten by such dog, who lawfully attempts to remove such team: *Fairchild* v. *Bentley*, 30 Barb. 147. And, under such circumstances, he is also liable, for injury to a seven-year-old child, although the child was meddling with a whip in the sleigh: *Meibus* v. *Dodge*, 38 Wis. 300.

In *Keighlinger* v. *Egan*, 65 Ill. 141, the biting occurred at a neighbor's house where the dog had followed one of defendant's family. The plaintiff was under the impression that the dog belonged about the house and was about to pat it on the head when it sprang up and bit him in the face. Defendant knew that the dog was vicious and was held liable. See *Marsh* v. *Jones*, 21 Vt. 378.

Proof of Viciousness.—In case of domestic animals the burden of proof of knowledge of viciousness is upon plaintiff, but otherwise as to animals of a wild nature: *Twigg* v. *Ryland*, 62 Md. 380; s. c., 24 Am. L. Reg. 181, note, 195; s. c., 50 Am. Rep. 226, note, 229. As to the extent of proof required to show that a dog is used to injure people, a mere habit of bounding upon and seizing persons in play, not so as to hurt or injure them, though causing some annoyance and trivial accidental damage to clothes, will not sustain the action, but "It is not necessary to show that he was used to *bite* if he was used to injure people." *Per* ERLE, C. J., in *Line* v. *Taylor*, 3 Foster & Fin. 731. The dog may be brought into court and shown to the jury to assist them in judging of his temper and disposition. In the last cited case, the dog was brought into court and led by his keeper with a chain. "The jury had him brought up to them," so runs the report, "and at their desire the keeper let go of him. They examined him, and appeared to be of opinion that, from the expression of his eye and other indications, he was not of a vicious disposition."

Any evidence tending to establish the ferocious and vicious propensity of the animal, known to the owner, is properly submitted to the jury. "That a dog has once bitten a man, is a circumstance from which the probability of its biting another may be inferred; but the same inference may be drawn with equal confidence from other indications of the dog's disposition:" *McCaskill* v. *Elliot*, 5

Strob. 196. Proof that defendant has warned a person to beware of the dog lest he should be bitten, is evidence to go to the jury of the allegation that the dog was accustomed to bite mankind: *Judge* v. *Cox*, 1 Stark 285. In charging the jury, ABBOTT, J., said: "In order to warrant a verdict for the plaintiff, you must be satisfied that the dog had before the time of the injury bitten some human being and that defendant knew it." But this expression is contrary to the weight of authority, as will be seen hereafter.

The fact that the dog was fierce and ferocious, and that he was kept chained and muzzled by his keeper, are "strong evidence" that the dog was known to be vicious: *Goodeau* v. *Blood*, 52 Vt. 251; s. c., 36 Am. Rep. 751.

In *Buckley* v. *Leonard*, 4 Denio (N. Y.) 500, 501, the owner knew that his dog was accustomed to do similar mischief. He kept the dog confined in the daytime, and at night kept him in his store. *Held*, to be strong evidence that the owner was fully aware that the safety of his neighbors would be endangered by allowing the dog to be at large.

Knowledge of the dangerous character of watch-dogs may be inferred from the owners' habit of tying them by day: *Goode* v. *Martin*, 57 Md. 606 s. c., 40 Am. Rep. 448. See 1 Thomps. on Neg. p. 203, § 17, and cases; *Montgomery* v. *Koester*, 35 La. Ann. 1091; s. c., 48 Am. Rep. 253. Full and satisfactory proof of a single instance of biting mankind and knowledge on the part of the owner or keeper will sustain the action: *Arnold* v. *Norton*, 25 Conn. 92. The gist of the action for the subsequent misconduct of the dog is for keeping it after knowledge of its vicious propensity: *Mann* v. *Weiand*, 81 star Pa. St. 243; see *Wheeler* v. *Brant*, 23 Barb. 324; Wood on Nuisance, § 763; *Jones* v. *Perry*, 2 Esp. 482; *Mason* v. *Keeling*, 12 Mod. 332; *Jenkins* v. *Turner*, 1 Ld. Raym. 109; *Smith* v. *Black*, 1 Sw. Digest 537; *Kittredge* v. *Elliott*, 16 N. H. 77; *Loomis* v. *Terry*, 17 Wend. 496. One attempt of a bull to gore is sufficient: *Cockerham* v. *Nixon*, 11 Ired. 269. In *Smith* v. *Pelah*, 2 Str. 1264, it was ruled (*per* LEE, C. J.) "that if a dog has once bitten a man, and the owner, having notice thereof, keeps the dog, and lets him go about and lie at his door, an action will lie against him at the suit of a person who is bit, though it happened by such person's treading on the dog's toes; for it was owing to his not hanging the dog on the first notice. And the safety of the king's subjects ought not afterwards to be endangered."

But if the proof is sufficient to show that the owner knew the dog was fierce and ferocious, it is unnecessary to prove that he had ever bitten mankind. "The formula used in the textbooks, and the forms given for pleadings in such cases, 'accustomed to bite,' does not mean that the keeper of a ferocious dog is exempt from all duty of restraint until the dog has effectually mangled and killed at least one person. * * If he had good reason to believe, from his knowledge of the ferocious nature and propensity of the dog, that there was ground to apprehend that he would, under some circumstances, bite a person, then the duty of restraint attaches, and to omit it was negligence:" *Goodeau* v. *Blood*, 52 Vt. 251; s. c., 36 Am. Rep. 751. See to same effect Shearman & Redfield on Neg. 231, 234; *Buckley* v. *Leonard*, 4 Denio (N. Y.) 500; *Rider* v. *White*, 65 N. Y.; s. c., 22 Am Rep. 600; *Worth* v. *Giding*, L. R. 2 C. P. 1.

In *Hudson* v. *Roberts*, 6 Exch. 697, a bull was being driven along the

highway, while plaintiff, who wore a red handkerchief, was passing along the same road. The red irritated the animal, and caused plaintiff to be gored by it. After the injury the owner of the bull said that the red handkerchief caused the injury, as he knew that *the* bull would run at anything red; and on a different occasion he said that he knew *a* bull would run at anything red. *Held*, this to be sufficient evidence of the *scienter*.

Servant's Knowledge.—Knowledge of a servant, who has charge of the animal, of its vicious propensities, is the master's knowledge: *Baldwin* v. *Casella*, L. R. 7 Ex. 325; *Stiles* v. *Steam Nav. Co.*, 33 L. J. (Q. B.) 310; *Corliss* v. *Smith*, 53 Vt. 532. Notice of a dog's vicious propensities given to defendant's wife, who attended to her husband's business in his absence, for the purpose of being communicated to the husband, was held to be some evidence of a *scienter*, to be considered by the jury: *Gladman* v. *Johnson*, 36 L. J. (C. P.) 153. BOVILL, C. J., said: "I am not prepared to assent to the proposition that notice to an ordinary servant, or even to a wife, would in all cases be sufficient to fix defendant in such an action as this, with knowledge of the mischievous propensities of the dog. But here it appears that the wife attended to the milk business, which was carried on upon the premises where the dog was kept, and that a formal complaint as to that dog was made to the wife when on the premises, and for the purpose of being communicated to the husband. It may be that this is but slight evidence of the *scienter*, but the only question is whether it is evidence of it. I think it is."

This case was referred to and commented upon in *Goode* v. *Martin*, 57 Md. 610, 611; s. c., 40 Am. Rep. 448; and in the case of *Stiles* v. *Cardiff Steam Nav. Co.*, 33 L. J. (Q. B.) 319, where a similar question arose, the Lord Chief Justice said that notice of the vicious propensity of the dog given to the porters or servants employed about the premises would not suffice; but that if brought home to the person who had the general management of the yard, in which the defendants themselves could not be supposed to be acting, and who had authority to say whether a dog should be kept there or not, or whether it should be chained up or not, it would be otherwise.

In *Applebiee* v. *Percy*, 6 L. R. (C. P.) 649; s. c., 10 Eng. R. 334, two persons who had upon previous occasions (one of them twice) been attacked by the dog in question were called to prove that they had gone to defendant's public house and made complaint to two persons who were behind the bar serving customers, and that one of them had also complained to the bar maid. There was no evidence that complaint was communicated to defendant, nor that the two men spoken to had the general management of defendant's business, or had care of the dog. *Held*, by Lord COLERIDGE, C. J., and KEATING, J. (BRETT, J., dissenting) that there was evidence of *scienter* to go to the jury, relying upon *Gladman* v. *Johnson*, *supra*. In *Twigg* v. *Ryland*, 62 Md. 380; s. c., 24 Am. L. Reg. 191; s. c., 50 Am. Rep. 226, it is held that a servant's knowledge, etc., of a dog accustomed to follow him about in the master's business but not put in his charge by the master is not imputable to the master. In giving the opinion, the court said: "It is very true, as shown by the authorities, that if the owner of a dog place it in the charge and keeping of a servant, the servant's knowledge of the dog's ferocious disposition is the knowledge

of the master. But it is not true that the knowledge of any servant that a dog may follow or be with about the premises where he is employed as to the disposition of the dog, is to be imputed to the master. This is clear upon all the authorities."

Liability Under Statute.—In case of injury to sheep, under the English statutes, proof of the *scienter* is unnecessary: 26 & 27 Vict., c. 60; 28 & 29, c. 100. And under the statutes of some of the states of the Union it is unnecessary to aver and prove the *scienter* to recover for injuries inflicted by dogs: *Kertschacke* v. *Ludwig*, 28 Wis. 430; *Orney* v. *Roberts*, 51 N. H. 110; *Swift* v. *Applebone*, 23 Mich. 252; *Pressey* v. *Worth*, 3 Allen (Mass.) 19; *Gries* v. *Zeck*, 24 Ohio St. 329; *Woolf* v. *Chalker*, 31 Conn. 132. While knowledge is unnecessary to sustain the action, yet it is an important element in determining the damages: *Swift* v. *Applebone*, 23 Mich. 252. And the judgment will not be arrested because the declaration does not set forth that the acts were done contrary to the form of the statute: *Mitchell* v. *Clapp*, 12 Cush. (Mass.) 278. The right under the statute does not supersede the common-law action. The plaintiff must distinctly aver that the injury was caused by the dog and set it forth as a cause of action. In *Monroe* v. *Rose*, 38 Mich. 347, plaintiff was riding in a sulkey, leading a colt with one hand and driving with the other. Defendant's dog ran out and bit the colt, which jumped forward, put one foot through the wheel of the sulkey and overturned it, and injured the colt, sulkey, and plaintiff. The petition alleged that the dog "bit the colt," but there was no averment that he assaulted or bit plaintiff, or that he "otherwise injured him" him; *held*, that evidence of injury to plaintiff was inadmissible. See *Searles* v. *Ladd*, 123 Mass. 580.

In *LeForest* v. *Tolman*, 117 Mass. 109, the dog bit plaintiff in New Hampshire, but was owned by defendant, who resided and kept his dog in Massachusetts. There was no evidence of knowledge, etc., on part of defendant, nor was it contended that there was liability under the laws of New Hampshire; *held*, that under General Statutes of Mass., c. 88, § 59, the action would not lie.

EUGENE MCQUILLIN.

St. Louis, Mo.

Supreme Court of Pennsylvania.

BLUM v. ROSS.

Where an insolvent opened a store, and carried on business in the name of his wife, who signed, for goods purchased, certain notes subsequently paid with the proceeds of the business, but was not further known in the business, *held*, that the obvious use of the wife's name was for the purpose of defrauding creditors, and there was no error in the court below refusing to submit the case to a jury.

ERROR to Court of Common Pleas of Bradford county.

Feigned issue, by Daniel Blum against Lewis P. Ross, to determine the ownership of property taken in execution as the property of Joseph C. Blum. The said Joseph C. Blum failed in the